

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Phyllis Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Request by Dakota Electric
Association for Approval of its Annual
Conservation Tracker Account Report

ISSUE DATE: December 15, 2003

DOCKET NO. E-111/M-02-1739

In the Matter of a Petition by Dakota Electric
Association for Authority to Increase Electric
Rates

DOCKET NO. E-111/GR-03-261

ORDER ACCEPTING AND ADOPTING
AGREEMENT SETTING RATES

PROCEDURAL HISTORY

To secure electric service, people south of the Twin Cities organized the Dakota Electric Association (Dakota Electric) on a cooperative basis pursuant to Minnesota Statutes § 308.05. Dakota Electric serves roughly 90,000 customers in Goodhue, Dakota, Rice and Scott Counties. Dakota purchases most of its electricity from Great River Energy of Elk River, Minnesota. While the Commission generally does not regulate rates charged by cooperative associations, Dakota Electric has elected to be subject to the Commission's rate regulation pursuant to Minnesota Statute § 216B.026.

On March 3, 2003, Dakota Electric sought authority to raise rates to increase revenues by 5.4%, or nearly \$6 million annually.

On April 21, 2003, the Commission issued orders finding Dakota Electric's filing substantially complete, suspending the proposed rates, referring the case to the Office of Administrative Hearings for contested case proceedings, and setting interim rates pursuant to Minnesota Statutes § 216B.16, subdivision 3. Consistent with Dakota Electric's request, the Commission set interim rates equal to existing rates.

There were two parties to the case: Dakota Electric and the Minnesota Department of Commerce (the Department). Dakota Electric was represented by Harold LeVander, Jr., Falhaber, Larson, Fenlon & Vogt, 30 East Seventh Street, Suite 2100, St. Paul, Minnesota. The Department was represented by Ginny Zeller, Assistant Attorney General, 1500 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota.

On July 14-15, 2003, the Administrative Law Judge held public hearings in Dakota Electric's service area to take testimony from members of the public on the proposed rate increases. One hearing occurred in Apple Valley, Minnesota, and the others in Farmington, Minnesota.

On August 26, 2003, the parties announced that they agreed on all material issues. The parties stipulated to the admission of all prefiled testimony, and offered witnesses to answer questions from the Administrative Law Judge and Commission staff about the factual and evidentiary basis for the agreement. On September 24, 2003, the parties jointly filed a Proposed Findings of Fact, Conclusions of Law, and Recommendations.

On September 26, 2003, the Administrative Law Judge returned the record to the Commission, reported that the parties agreed on all material issues, submitted the agreement for Commission consideration and recommended approval. Under Minnesota Statutes § 14.61, subdivision 2, the record closed on October 16, 2003.

On November 6, 2003, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. The Agreement

Overall, the parties propose reducing the proposed increase in Dakota Electric's annual revenue requirement from \$5,956,000, a 5.4% increase, to \$5,356,793, a 4.8% increase. This overall reduction came from numerous discrete adjustments. For example, proposed increases in operation and maintenance expense for distribution plant, depreciation and amortization costs, property taxes and overhead costs were all reduced.

Beyond reaching agreement about the amount of revenues that Dakota Electric should recover, the parties also agreed on the specific rates that would permit the company to recover this sum. Finally, the parties agreed that Dakota Electric should be permitted to implement these rates in January 2004, beginning at the start of each customer's first billing cycle in the new year.

II. The Legal Standard

Under the Public Utilities Act, companies seeking a rate increase have the burden of proof to show that the proposed rate change is just and reasonable. Minn. Stat. § 216B.16, subd. 4. Any doubt as to reasonableness is to be resolved in favor of the consumer. Minn. Stat. § 216B.03.

The Act encourages settlements. Before beginning contested case proceedings on a general rate case, Administrative Law Judges are required to convene a settlement conference for the purpose of encouraging settlement of some or all of the issues in the case. They are authorized to reconvene the settlement conference at any point before the case is returned to the Commission, at their own discretion or at the request of any party. Minn. Stat. 216B.16, subd. 1a(a).

The Commission is authorized to accept, reject, or modify any agreement by the parties. It can accept a agreements only upon finding that to do so is in the public interest and is supported by substantial evidence. Minn. Stat. § 216B.16, subd. 1a(b).

The Commission recognizes that resolving disputed issues in rate cases is fundamentally different from resolving disputes between private litigants:

[T]he Commission must apply a different standard than is normally used by the courts. Unlike the traditional function of civil courts, the Commission's primary function is not to resolve disputes between litigants. Instead, it is an affirmative duty to protect the public interest by ensuring just and reasonable rates.¹

III. Commission Action

A. Generally

The Commission finds that the parties' agreement, as clarified at the hearing, is supported by substantial evidence, is in the public interest, and should be approved.

The joint Proposed Findings of Fact, Conclusions of Law, and Recommendations filed by the parties cites to record evidence to support and explain its disposition of every issue. The Commission concurs with the parties that all issues have been addressed in a manner supported by substantial evidence, and on terms consistent with the public interest.

The Commission will accept and adopt the agreement.

B. Financial Schedules

1. Rate Base Summary

Based on the foregoing findings regarding the joint Proposed Findings of Fact, Conclusions of Law, and Recommendations, the Commission concludes that the appropriate rate base for the test year is \$127,405,407 as shown below:

¹ *In the Matter of a Petition by the U.S. Department of Defense, the General Services Administration, and All Other Federal Executive Agencies of the United States Challenging the Reasonableness of the Rates Charged by Northwestern Bell Telephone Company*, Docket No. P-421/CI-86-354, ORDER ACCEPTING OFFER OF SETTLEMENT (February 10, 1988) at 3; see also *In the Matter of the Application of Interstate Power Company for Authority to Change its Rates for Natural Gas Service in the State of Minnesota*, Docket No. G-001/GR-90-700, ORDER ACCEPTING AND ADOPTING STIPULATION AND OFFER OF SETTLEMENT (June 27, 1991) at 6-7.

TABLE A

Utility Plant in Service	\$ 183,433,560
Construction Work in Progress	2,164,000
Less: Accumulated Depreciation	<u>(59,610,319)</u>
Net Plant in Service	\$ 125,987,241
Materials and Supplies	2,232,026
Working Capital	(696,779)
Less: Customer Deposits	<u>(117,081)</u>
Total Rate Base	\$ <u><u>127,405,407</u></u>

2. Operating Income Summary

Based on the foregoing findings regarding the agreement, the Commission concludes that the net operating income for the test year under present rates is \$2,521,651 as shown below:

TABLE B

Operating Revenues	
Rates	\$ 110,020,211
Other	<u>1,319,978</u>
Total Revenues	\$ <u><u>111,340,189</u></u>
Operating Expenses	
Purchased Power	\$ 75,322,336
Distribution – operations	4,805,656
Distribution – maintenance	3,687,047
Consumer Accounts	3,388,217
Consumer Service & Information	3,906,251
Administrative & General	7,758,346
Depreciation & Amortization	6,908,061
Taxes – property	3,179,350
Other Interest Expense	158,895
Other Deductions	<u>(295,621)</u>
Total Operating Expenses	\$ <u><u>108,818,538</u></u>
Net Operating Income	\$ <u><u>2,521,651</u></u>

3. Gross Revenue Deficiency

The above Commission findings and conclusions result in a gross revenue deficiency for the test year of \$5,356,793 as shown below:

TABLE C

Rate Base (from Table A)	\$ 127,405,407
Required Rate of Return	<u>6.48%</u>
Required Total Income	\$ 8,255,870
Less: Non-Operating Income	<u>(377,426)</u>
Required Net Operating Income	\$ 7,878,444
Net Operating Income (from Table B)	<u>2,521,651</u>
Revenue Deficiency	<u><u>\$ 5,356,793</u></u>

C. Rates and the Resource & Tax Adjustment

Dakota Electric and the Department have agreed on new rates to recommend to the Commission. These rates are designed to recover the company's revenue requirement based on forecasted circumstances.

However, mechanisms exist to permit Dakota Electric's rates to adjust to reflect changes in certain costs occurring outside the context of this rate case, including changes in the cost of power, conservation expenses, demand-side management (DSM) expenses and property taxes. On November 21, 2002, the Commission authorized Dakota Electric to increase the price of its electricity by \$0.0020 per kilowatt-hour to help defray its conservation and DSM expenses.² The parties acknowledge that the new rates agreed to by Dakota Electric and the Department already account for the current level of expenses.³ Consequently, the new rates need not be subject to any additional adjustments unless and until such an adjustment is approved in the future.

The Commission has reviewed the proposed rates as clarified above and finds them reasonable. The Commission will approve them, and will reset the adjustment for conservation and DSM expenses to zero when the new rates take effect.

² *In the Matter of a Request by Dakota Electric Association for Approval of its Annual Conservation Tracker Account Report*, Docket No. E-111/M-02-1739 (November 21, 2002).

³ See *In the Matter of a Request by Dakota Electric Association to Waive Requirement of October 2003 Annual Conservation Tracker Account Report*, Docket No. E-111/M-03-1493, Request of Dakota Electric (September 17, 2003):

If Dakota Electric's general rate case is approved by the MPUC by year-end, the proposed new conservation spending base ... will be incorporated into the new 2004 tariff rates, and therefore ... the conservation spending factor for 2004 would be set at \$0.00 per kWh....

D. Implementation

Dakota Electric proposes a schedule for implementing the rate increase, and proposes a notice for informing customers of the new rates. Dakota Electric acknowledges that the schedule is unconventional. Typically the Commission approves a rate change to take effect on a specific date. But Dakota Electric asks that its rate increase be phased in throughout the month of January 2004, as explained below.

Public utilities typically bill their customers monthly. For administrative convenience and financial stability, utilities typically do not issue all their bills on the first day of the month, but rather spread the task out throughout the month. Utilities divide their customers into categories, or “billing cycles,” and issue bills to all customers within the same billing cycle on the same day. Consequently, while all customers may use electricity on January 1, Dakota Electric may bill those customers on different days for that usage.

If the Commission were to order Dakota Electric to implement its rate change on January 1, 2004, then Dakota would have to pro-rate its customer’s bills. Most of the bills issued by Dakota Electric in January 2004 will address service rendered during the end of December 2003 and the beginning of January 2004. Because different rates would apply to service rendered in these two months, Dakota Electric would need to prorate each customer’s bill.

To avoid the administrative difficulty this process creates, and the resulting customer confusion, Dakota proposes delaying the onset of new rates for any bill that includes service rendered during 2003. The new rates would apply only to bills for service rendered entirely in 2004 and beyond. The Department supports Dakota Electric’s proposal, as well as its proposed customer notice.

The manner in which Dakota Electric proposes to implement its new rates is unconventional, in that it causes some customers to be subject to the higher rates before other customers. But the unusual circumstances of the current case justify Dakota Electric’s proposal. While the Commission may expect large electric utilities to bear the administrative burden of prorating customer bills, such burdens are not always justified in the case of smaller companies such as Dakota Electric. Additionally, the fact that cooperative associations are owned by their customers gives the Commission greater confidence that Dakota Electric’s proposal is not counter to its customers’ interests. Moreover, the party most prejudiced by the Company’s proposal is Dakota Electric itself, because the Company is effectively seeking to partially delay its rate increase. Finally, while Dakota Electric’s proposal would result in some customers enjoying lower rates for longer than others, this benefit would be inconsequential, randomly-distributed, and brief. Given the unusual circumstances noted above, the Commission finds Dakota Electric’s proposed implementation schedule reasonable and will approve it, along with the proposed customer notice.⁴

⁴ See also *In the Matter of the Application of Minnegasco, a Division of Arkla, Inc. for Authority to Increase its Rates for Natural Gas Service in Minnesota*, Docket No. G-008/GR-92-400, and *In the Matter of Minnegasco's Proposal for a New Area Surcharge Rider*, Docket No. G-008/M-93-743 ORDER APPROVING GAS TARIFF BOOK AND CUSTOMER NOTICES, AS MODIFIED, AND OPENING A NEW AREA SURCHARGE RIDER DOCKET (August 12, 1993) (finding unusual circumstances warranted similar implementation plan).

ORDER

1. The Commission accepts and adopts the ALJ's Report.
2. The Commission adopts the rates proposed by the parties in their proposed findings.
3. The Commission approves Dakota Electric's proposed customer notice of final rates. Specifically, for each billing cycle, the approved rates shall be effective with the beginning of the new cycle in January 2004, and shall apply to service and usage on and after that date.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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